

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.55 OF 2004

Monish H.Bhalla
Intelligence Officer,
Narcotics Control Bureau,
Ahmedabad Zonal Unit,
Ahmedabad.]
]..Applicant
(Ori.Complainant)

Versus

1. Satya Parkash Bahl @
S.P.Bahl @ S.P. S/o. Late
Gyanchand Bhal,
s/o Late Gyanchand Bhal
Resident of floor no.4,
11th floor,
435, Gulati Nivas,
14th Road Khar,
Mumbai-400052]
]
2. The State of Maharashtra]
]
3. Bankim Shah, Daman
Sub-Divisional Jail,]..Respondents

.....
Mr.P.M.Pradhan with Mr.D.N.Salvi Advocate for
Applicant.
Mr. Sunil Mehta for Respondent no.1.
Mr.A.S.Shitole A.P.P. for Respondent no.2-State.
Mr.S.D.Patil for Respondent no.3.
.....

CORAM: SMT.V.K.TAHILRAMANI, J.
DATE : OCTOBER 19, 2004

ORAL JUDGMENT:

1. The applicant i.e. original complainant who is
the Intelligence Officer, Narcotic Control Bureau,

Ahmedabad Zonal Unit, has filed this revision application being aggrieved by the order dated 16th June, 2003 passed by the learned Special Judge, Union Territory of Dadara Nagar Haveli at Silvassa in N.D.P.S. Special Case No.3 of 2004. By the said order, the learned Special Judge discharged the respondent Satya Prakash Bahl alias S.P.Bahl @ S.P.S/o Late Gyanchand Bhal, s/o Late Gyanchand Bhal. Satya Prakash Bahl was the original accused no.2 in the said case.

2. I have heard Mr.Pradhan, the learned counsel appearing for the applicant, Mr.Mr.D.N.Mehta for Respondent no.1, Mr.A.S.Shitole A.P.P. for Respondent no.2-State and Mr.S.D.Patil for respondent no.3.

3. The complainant had filed complaint against three accused persons i.e. original accused no.1 Bankim Shah, original accused no.3 Chandra Prakash Sharma alias Shankar Sharma and respondent no.1-Satya Prakash who was accused no.2.

4. It is the prosecution case that on certain information, the officers of N.C.B. carried out the search and 372 kgs. of 'charas' was found packed in metal kettles in the godown in possession of accused

no.1 Bankim Shah on 17.2.2002. The statement of accused no.1 Bankim Shah came to be recorded under Section 67 of the N.D.P.S.Act. In his statement, he inter alia stated that at the instance of accused no.2 Satya Prakash Bahl, accused no.3 Chandra Prakash supplied 'charas' to him. He was required to pack the same in metal kettles in his factory. Thereafter, the same were to be lifted by accused no.2 Satya Prakash Bahl. However, thereafter, the material was not lifted by accused no.2 Satya Prakash Bahl and the material remained in his godown from where it came to be seized. The statement of accused no.3 Chandra Prakash also came to be recorded wherein he admitted to have supplied 103 kgs. of 'charas' to accused no.1 Bankim Shah during the year 2000. The statement of the present respondent came to be recorded, however, he denied any connection with the supply of 'charas' to accused no.1 Bankim Shah through accused no.3. However, he admitted that he had advanced loan of Rs. 12 lakhs to the father of accused no.1 Bankim Shah and he was receiving interest on that money from time to time. The statements of some others also came to be recorded and several documents also came to be seized during the investigation. After completion of investigation, the complaint came to be filed against all the three accused under Section

20(d), 29(8)(c) of the N.D.P.S.Act. Accused no.1 Bankim Shah came to be arrested on 18.2.2002 while petitioner and accused no.3 Chandra Prakash were already in jail since the year 2000 as they were arrested in some other case.

5. The respondent Satya Prakash Bahl filed an application for discharge before the learned Special Judge. His main contention was that there was no material to implicate him in this case and he has been falsely implicated in the said case. After perusing the material gathered by the Investigating Agency and after hearing both the sides, the learned Special Judge discharged the respondent No.1 Satya Prakash Bahl. The reason for discharging the respondent Satya Prakash Bahl is that the only material against the respondent Satya Prakash Bahl is the statement of co-accused i.e. more particularly accused no.1 Bankim Shah. The statement of accused no.3 Chandra Prakash does not directly implicate the respondent Satya Prakash Bahl. Accused no.1 Bankim Shah in his statement dated 18.2.2002 not only admitted the crime, but he also implicated accused nos.2 and 3 in this crime. According to him, at the instance of accused no.2 Satya prakash Bahl, accused no.3 Chandra Prakash Sharma @ Shankar Sharma had supplied him 372 kg. of

charas. He was to pack and seal the charas in the kettles made of metal so that the contents could not be detected. After packing and sealing by particular procedure was completed, accused no.2 was to lift all this material from accused no.1. For this purpose accused no.2 had given him an amount of RS.12,00,000/- as advance. He had completed the work as per the requirement. But accused no.2 failed to lift the material for long and therefore, it was lying in his godown. Though accused no.3 did not admit to have supplied 372 kg. of charas to accused no.1, he admitted the supply of 175 kg. of charas to him in the year 2000. As such accused no.3 had confessed to have supplied Charas to a person at Silvassa though he had not specifically named accused no.1. As far as accused no.2 is concerned, he did not admit his involvement in any of those matters and he also tried to explain that he had advanced a loan of Rs.12,00,000/- to the father of accused no.1 and he was getting interest for the same.

6. On a specific query by this Court, it was admitted that besides the statement of co-accused there is no other material against the respondent no.1 Satya Prakash Bahl. In such case, the question which arises for consideration is whether the

confession of one of the accused implicating the other accused, can be treated as substantive evidence. The statements of co-accused have been recorded under Section 67 of the N.D.P.S.Act. There is no provision under Section 67 of N.D.P.S.Act like one under Section 15 of the TADA Act, which makes the statement of an accused admissible against the co-accused, conspirators or abettors. In such case, one would have to fall back on Section 30 of the Evidence Act to see what use can be made of the statement of one accused against the co-accused. This aspect has been considered by the Honourable Supreme Court in a number of matters i.e. in the case of **Bhuboni Sahu Vs. The King; AIR 1949 P.C. 257, Haricharan Kurmi and another Vs. State of Bihar; AIR 1964 SC 1184; Kashmira Singh Vs. State of M.P.; 1952 SCR 526: AIR 1953 SC 159.** In **Haricharan Kurmi (supra)**, the Supreme Court has observed in para no.12 thus:

- . "It would be noticed that as a result of the provisions contained in Section 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the Court is evidence; circumstances which are considered by the Court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of

section 30, the fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That briefly stated, is the effect of the provisions contained in Section 30. The same view has been expressed by this Court in *Kashmira Singh Vs. State of Madhya Pradesh* 1952 SCR 526: (AIR 1952 SC 159) where the decision of the Privy Council in *Bhuboni Sahu's case*, 76 Ind App 147) (AIR 1949 PC 257) has been cited with approval".

7. From the above observations, it is clear that in dealing with a case against an accused the Court must begin with the other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it can turn to the confession in order to receive assurance to the conclusion of the guilt. The Court cannot hold the accused guilty on the basis of the confession made by the co-accused and then proceed to find some corroboration to that confession.

8. There is preponderance of authorities of the Supreme Court to the effect that a confession made

by the co-accused cannot be treated as substantive evidence, but only as a corroborative piece of evidence. It means the prosecution is required to lead evidence to prove the offence against the accused independently of a confession made by co-accused and if necessary the Court may look into the confessional statement of the co-accused to seek support or corroboration to the evidence already placed on record. The Court cannot start to find out guilt of an accused on the basis of confessional statement of co-accused and also cannot hold the accused guilty merely on the basis of such confessional statement of the co-accused. The facts of the present case will have to be looked into in the light of this legal position.

9. The facts of this case are already stated in brief. Firstly we will have to find out what is the evidence against accused no.2 besides the confessional statement made by accused no.1. As stated earlier in reply to a specific query by this Court, the learned counsel for the applicant replied that besides the statement of the co-accused there is no other material against the respondent. If this confession is kept aside for a moment there is no evidence at all to establish that accused no.2 had entered into any conspiracy or abetted accused

no.1 and 3 to commit the crime or that he had taken part in commission of this crime in any manner.

10. In the present case, the statement of Mangesh the brother of accused no.1 was also recorded under Section 67 of the N.D.P.S.Act. Mangesh has stated that Accused no.2 had contacted him on telephone and asked about his brother accused no.1. he had also told Mangesh that one of his colleague Chandra Prakash @ Shankar Sharma was in jail at Navsari in some matter and he wanted Bankim Shah to help him in engaging a lawyer to defend his case. Mangesh contacted accused no.1 and told him about the message of accused no.2. Accused no.1 told Mangesh that it was not proper for himself to go to jail. But he instructed Mangesh to go to Navsari jail and obtain signature of accused no.3 on Vakalatnama to engage some Advocate. Accordingly, Mangesh went to the jail, met accused no.3 and obtained his signature on Vakalatnama. He also stated that while making application to jail authority for meeting accused no.3 he had not disclosed his true address and business, but had disclosed that he was assistant of some Advocate and had come to obtain his signature on Vakalatnama to engage an Advocate. He also stated that accused no.3 had told him that he was not getting good food in the jail, therefore,

through some guards he helped accused no.3 to get some good food from outside. According to him, he came back with signature of accused no.3 on Vakalatnama and handed over the same to accused no.1. The statement of Mangesh also does not establish in any manner that accused no.2 had entered into any conspiracy or abetted the remaining accused to commit the offence under Narcotics Drugs and Psychotropic Substances Act. His statement only indicates that accused no.2 had given message to accused no.1 to render assistance to accused no.3 in getting legal aid by engaging some Advocate. A person, who may be totally innocent, may also render such assistance to his friend or relative. That itself does not make such person conspirator or abettor of the crime committed by his friend. There is no evidence that any narcotic drug or charas was seized from the possession of accused no.2 in this case nor there is any documentary evidence to establish his role in the present crime. It means except the confessional statement made by accused no.1 inculcating accused no.2, there is no evidence with the prosecution against him. As per the settled law the confession of co-accused can be looked into only to provide corroboration to the other evidence against the accused. But when there is no other evidence, question of seeking

corroboration from the confession of such a co-accused will not arise. It is well settled that the Court cannot hold the accused guilty only on the basis of the confession made by co-accused. . Thus, it is well settled that under Section 30 of the Evidence Act, the confession made by one accused is not substantive evidence against the co-accused. It has only a corroborative value.

11. In view of the legal position and the facts of this case, except the confession of the co-accused, there is no material against accused no.2 and if the trial proceeds against him with this evidence, in view of the settled legal position, no Court can convict him in this case.

12. The learned Special Judge has taken all these facts into consideration and he has discharged the Respondent-Satya Prakash Bahl. The scope of this Court in Revision is rather limited. On perusal of the judgment, I find that there is no infirmity, illegality and impropriety in the judgment and order passed by the learned Special Judge, hence, revision application is dismissed.